

## Prototype School Food Authority (SFA)-Food Service Management Company (FSMC) Contract Checklist (Revised 3/2011)

This checklist is based on the requirements contained in 7 CFR parts 210, 215, 220, 250, 3015, 3016, and 3017, and OMB Circular No. A-102, Attachment O, OMB Circular No A-87, Federal Acquisition Regulations (FAR), and Idaho Statute 33-601.

The January, 2009 document titled “Contracting with Food Service Management Companies: Guidance for State Agencies” and the April, 2009 document titled “Contracting with Food Service Management Companies: Guidance for School Food Authorities” was also used as a resource to develop this checklist. Both of these guidance documents are available on the CNP2000 website under “NSLP Guidance” for your reference.

If sponsors are rebidding or entering into a new FSMC contract the State agency (SA) **must** carefully examine the **unsigned** contract document(s) to ensure that it **does not** contain other unallowable contract document provisions as well as provisions that are **not** in the best interest of the SFA **PRIOR** to execution of the contract by either party. Careful scrutiny of the **unsigned** contract document(s) is required to ensure that there are no provisions that have the effect of restricting competition.

**Competitive Sealed Bid**—if the competitive sealed bid method is used, the SA should review the contract documents prior to issuance of the Invitation for Bid (IFB), as all variables, including a precise description of the menu, are defined by the IFB.

**Competitive Negotiation**—if the competitive negotiation method is used, the Request for Proposal (RFP) describes desired outcomes and the weighted criteria that will be used to evaluate the proposal. SA review of the RFP is beneficial when such a review occurs prior to the publication of the RFP.

**Proposed Contract**—Under the new procurement regulations, SAs are required to review and approve all SFA contracts and contract amendments between SFA’s and FSMC’s **prior** to contract execution.

### Contract Document Review

Regulations governing procurement requirements in the NSLP, SBP, and SMP, issued on October 31, 2007 require State Agencies (SA) to review contracts (and supporting documentation) prior to the execution (i.e. prior to signature) of the contract. This change is meant to ensure that contracts containing unallowable terms and conditions are corrected prior to the contract being executed.

Another important change made by the procurement regulation is that all contracts must contain a provision clearly requiring that all costs to the program be net of applicable discounts, rebates, and credits. SAs must ensure that SFAs include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: *“Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA [210.21(f)(1)(i)].”*

Additionally, this rule requires contractors to provide sufficient information to permit the school food authority to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payment to the school food authority [210.21(f)(1)(ii)(A)]. It is important to note that the contractor's determination of its allowable costs

must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars [(210.21(f)(1)(iii)].

It is also important that the SA ensures that the SFA's contract contains this requirement so that the contractor is transparent in their identification of these rebates, discounts, and credits [210.21(f) (1) (iii), (iv), (v), (vi)].

The SA should ensure that the contract documents have been drafted or developed by the SFA and not the FSMC competing for the procurement. This regulation exists to ensure contractor performance and eliminate unfair competitive advantage [3016.60(b)].

The accompanying checklist must be completed by the SFA and submitted with the **unsigned** document(s) to the SA for approval.

Though the checklist identifies certain unallowable SFA-FSMC contract document provisions and advisable contract document provisions it is in no way inclusive of all such provisions.

**Contract Renewal**—If the option for the yearly renewal of a contract is exercised, the SFA should include a copy of the checklist which was submitted with the initial contract, and a new checklist cover sheet, when submitting the extension agreement to the SA. The initial checklist should include notation(s) where changes have occurred. The basis for renewing the contract, as well as the basis for any fee increases or decreases, if applicable, must be noted.

Please note that contracts (including all supporting documentation) between any SFA and FSMC must be reviewed annually by the State Agency prior to execution of the contract by either party to ensure compliance with all the provisions and standards set forth in this part. **The renewal date must occur on or prior to the expiration date of the current contract. The beginning date should not be prior to the date the contract is signed.** (*FSMC Guidance for SFAs – April 2009, page 8-1*)

A new Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions and Certification Regarding Lobbying are required for each renewal period.

**Proposed Contracts**  
**OR**  
**Contract Renewals**

The following must be completed as applicable:

**Section A. Cover Sheet**, page 1

**Section B. SFA Responsibilities**, pages 2 - 3

**Section C. FSMC Responsibilities**, page 4

**Section D. General Terms - All SFA-FSMC Contracts**, page 5

The following must be completed or updated, as applicable (in the case of a cost-reimbursable contract, the total value of the contract **must** reflect the management fees as well as the direct costs incurred by the FSMC which are billed to the SFA such as food and labor):

**Section E. SFA-FSMC Contracts in Excess of \$2,500**, page 6

**Section F. SFA-FSMC Contracts in Excess of \$10,000**, page 6

**Section G. SFA-FSMC Contracts - \$25,000 or More**, page 6

**Section H. SFA-FSMC Contracts in Excess of \$100,000**, page 6

**Section I. SFA-FSMC Contracts Involving Research, Developmental,  
Experimental and Demonstration Work**, page 6

The following must be completed or updated:

**Section J. Unallowable SFA-FSMC Contract Document Provisions**, page 7

A review of the document(s) should also include:

**Section K. Advisable Inclusions**, page 8

## Prototype SFA-FSMC Contract Document Checklist

### Section A - Cover Sheet

**SFA Use:** Review of the following attached document(s) was completed relative to the applicable requirements contained in this checklist:

### Proposed Documents:

☐ Invitation for Bid (IFB)      ☐ Request for Proposal (RFP)      ☐ Contract

**Completed Documents:**

☐ Bid Documents (IFB/Signed Contract) ☐ Bid Documents (RFP/Signed Contract)

☐ Contract Renewal. Indicate basis for both renewal and fee increases or decreases, if applicable

☐ 1st Renewal    ☐ 2nd Renewal    ☐ 3rd Renewal    ☐ 4th Renewal

Period Covered by Renewal: From: \_\_\_\_\_ To: \_\_\_\_\_  
(Date) (Date)

For Awarded Contract (please attach sheet if additional space is needed):

Name of FSMC: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_

Agreement No.: \_\_\_\_\_ Contract Value: \_\_\_\_\_

School Food Authority: \_\_\_\_\_  
School  
Name(s): \_\_\_\_\_

Period Covered by Contract: From: \_\_\_\_\_ To: \_\_\_\_\_  
(Date) (Date)

SFA Authorized Representative: \_\_\_\_\_  
Date: \_\_\_\_\_ (Signature) \_\_\_\_\_

### State Agency Use

Date Received: \_\_\_\_\_  
Action Taken: \_\_\_\_\_

State Agency Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

## Section B - SFA Responsibilities

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided:

- \_\_\_\_\_ 1. **Provisions Under Program Agreement, §210.16(a)(2)**—SFA will ensure that the food service operation is in conformance with the SFA's agreement under the program.
- \_\_\_\_\_ 2. **Signature Authority, §210.16(a)(5)**—SFA will retain signature authority on the SA-SFA agreement, free and reduced price policy statement and Claims for Reimbursement.

### 3. Control of the School Food Service Account and Overall Financial Responsibility

- \_\_\_\_\_ a. **§210.16(a)(4)**—SFA will retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and
- \_\_\_\_\_ b. SFA will retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.
- \_\_\_\_\_ c. USDA, FNS Guidance for School Food Authorities Contracting with FSMC. If FSMC promises a guarantee to meet fiscal goals specified by the SFA, the SFA must ensure that any guaranteed return promised by the FSMC is defined (using actual numbers) and remains in the non-profit food service account. If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. “Returns” cannot be contingent upon multi-year contract duration.
- \_\_\_\_\_ d. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority [210.21(f) (1) (i)].

### 4. USDA Donated Foods

- \_\_\_\_\_ a. **§210.16(a)(6)**—SFA retains title to USDA donated foods; and
- \_\_\_\_\_ b. SFA ensures that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. All refunds received from processors must be retained by the SFA.
- \_\_\_\_\_ c. In cost reimbursable contracts, the SFA will ensure that in accordance with 7CFR 250.51 (b), the FSMC credits the SFA for the value of all donated foods received for use in the SFA's meal service at least on an annual basis. (The SFA will verify by checking invoices that the FSMC is not purchasing similar foods without first utilizing all commodity foods offered by USDA)

- \_\_\_\_\_ d. SFA guarantees that in accordance with 7 CFR 250.51 (d), the FSMC must use all donated ground beef, donated ground pork, and all processed end products, in the SFA's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, must be used.)
- \_\_\_\_\_ e. The SFA will ensure that the FSMC meets the general requirements for the storage and inventory management of donated foods in 7CFR 250.14 (b)

**5. Quality, Extent and General Nature of Food Service**

- \_\_\_\_\_ a. **§210.16(c)(3)**—SFA will provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFB's or RFP's. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.
- \_\_\_\_\_ b. **§210.16(a)(4)**—SFA will retain control of the quality, extent, and general nature of its food service.
- \_\_\_\_\_ c. **§210.16(c)(3)**—SFA will make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract.

\_\_\_\_\_ 6. **Health Regulations, §210.16(a)(7)**—SFA will maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.

\_\_\_\_\_ 7. **Monitoring Responsibilities, §210.16(a)(3)**—SFA will monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.

\_\_\_\_\_ 8. **Use of Advisory Board, §210.16(a)(8)**—SFA establishes and maintains an advisory board composed of parents, teachers, and students to assist in menu planning.

\_\_\_\_\_ 9. **21-Day Cycle Menu, §210.16(b)(1)**—SFA will develop a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210 for the FSMC bid/proposal. (FSMC developed cycle menus are only appropriate to use under the competitive negotiation method of procurement.) The SFA must approve any changes to the cycle menu after the first 21 days of meal service.

## Section C - FSMC Responsibilities

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided:

- \_\_\_\_\_ 1. **Health Certification, §210.16(c)(2)** - Maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility.
- \_\_\_\_\_ 2. **21-Day Cycle Menu, §210.16(b)(1)** - Adhere to the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the SFA.
- \_\_\_\_\_ 3. **Provision of Free and Reduced Price Meals, §210.16(a)** - In order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children.
- \_\_\_\_\_ 4. **USDA Donated Foods, §250.51 (d)** - Guarantee that the FSMC will use all donated ground beef, donated ground pork and all processed end products, in the SFA's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, must be used).
- \_\_\_\_\_ 5. **Recordkeeping, OMB Circular No. A-102, Attachment O, paragraph 14.h and §210.16(c)(1)** - Maintain records to support the SFA's Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, SA, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit.
- \_\_\_\_\_ 6. **Reporting, §210.16(c)(1)** - Report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA.
- \_\_\_\_\_ 7. **Purchasing, per OIG 7/03** – All payment discounts, rebates and allowances obtained from vendors must go to the SFA's food services account.
- \_\_\_\_\_ 8. **Reporting, 210.16 (c) (1)** – For cost-based contracts; cost breakdown of management and administrative fees, if applicable, must be kept to demonstrate there is no double billing of charges; time and attendance records for labor costs billed, if applicable; and breakdown of special function costs, if applicable.
- \_\_\_\_\_ 9. **Reporting, 210.16 (c) (1)** – Revenue records broken down by source, type and category of meal or food service, e.g. ala carte sales, reduced price and full price NSLP and SBP meals.
- \_\_\_\_\_ 10. **Purchasing, per OIG 7/03** – Charges to the SFA for goods and services should be reasonable and necessary for the operation of the non-profit school foodservice.
- \_\_\_\_\_ 11. **Reporting, [210.21(f)(1)(iii),(iv),(v),(vi)]** - FSMC will provide sufficient information to permit the school food authority to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payment to the school food authority [210.21(f)(1)(ii)(A)]. It is important to note that the contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars [(210.21(f)(1)(iii)]. It is also important that the SA ensures that the SFA's contract contains this requirement so that the contractor is transparent in their identification of these rebates, discounts, and credits.

## Section D - General Terms - All SFA-FSMC Contracts

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided:

### 1. Contract Duration

\_\_\_\_\_ a. **§210.16(d)**—contracts must be of duration no longer than one (1) year.

\_\_\_\_\_ b. **§210.16(d)**—options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.

\_\_\_\_\_ 2. **Energy Policy and Conservation Act, OMB Circular No. A-102, Attachment O, paragraph 14.**

\_\_\_\_\_ 3. **Termination Clause, §210.16(d)**—either party may cancel for cause with 60-day notification.

\_\_\_\_\_ 4. **Nonperformance Sanctions - OMB Circular No. A-102, Attachment O, paragraph 14.a**—provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate.



**Section E - SFA-FSMC Contracts in Excess of \$2,500 Involving Food  
Service Workers Whose Duties are Manual or Physical in Nature**

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided. If this provision is not applicable, write N/A:

\_\_\_\_\_ **Contract Work Hours and Safety Standards Act, OMB Circular  
No. A-102, Attachment O, paragraph 14.f**

**Section F - SFA-FSMC Contracts in Excess of \$10,000**

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided. If this provision is not applicable, write N/A:

- \_\_\_\_\_ 1. **Termination Clause - OMB Circular No. A-102, Attachment O, paragraph 14.b**
- \_\_\_\_\_ 2. **Equal Employment Opportunity - OMB Circular No. A-102,  
Attachment O, paragraph 14.c**

**Section G - SFA-FSMC Contracts - \$25,000 or More**

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided. If this provision is not applicable, write N/A:

\_\_\_\_\_ **Debarment, Suspension, Ineligibility and Voluntary Exclusion, 7 CFR  
3017.510**—certification regarding debarment/suspension from participating in  
Federal contracts/grants/awards. A new certification is also required for each renewal  
period.

**Section H - SFA-FSMC Contracts in Excess of \$100,000**

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided. If this provision is not applicable, write N/A:

- \_\_\_\_\_ **Certification Regarding Lobbying, 7 CFR Part 3018**—a new certification is also  
required for each renewal period.
- \_\_\_\_\_ **Disclosure of Lobbying Activities, 7 CFR Part 3018**—lobbying activities in  
connection with school nutrition programs must be disclosed. If there are material  
changes after the initial filing, updated reports must be submitted on a quarterly basis.
- \_\_\_\_\_ **Clean Air Act, Clean Water Act, and Environmental Protection Agency  
Regulations, OMB Circular No. A-102, Attachment O, paragraph 14.i**

**Section I - SFA-FSMC Contracts Involving Research,  
Developmental, Experimental and Demonstration Work**

Indicate page number(s) and section in the contract where the provisions listed below are located in the space provided. If this provision is not applicable, write N/A:

\_\_\_\_\_ **USDA Rights to Copyrights, Patent Rights and Rights in Data and Reporting of  
Discoveries and Inventions, OMB Circular No. A-102, Attachment O, paragraph  
14.g**

## Section J - Unallowable SFA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in SFA-FSMC contract documents. The contract documents **must** be thoroughly checked, regardless of the procurement method used, to ensure that these areas **have not** been included, in any form. Indicate with a check mark in each box that the review of the document(s) indicates that there are no such provisions in the reviewed document(s), unless specified below.

- ☐ 1. **Cost Plus a Percentage of Cost/Income**—cost plus a percentage of cost/income to the FSMC however represented.
- ☐ 2. **Duplicate Fees**—fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.
- ☐ 3. **Purchasing**—if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.
- ☐ 4. **Acceleration Clause**—provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not renegotiated.
- ☐ 5. **Interest Payments**—interest payments to the contractor, however represented, including interest payments for equipment purchases.
- ☐ 6. **Guaranteed Return**—any "guaranteed return" must remain in the nonprofit food service account. "Returns" cannot be contingent upon multi-year contract duration. "Returns" must be defined using actual numbers.
- ☐ 7. **Delegation of SFA Responsibilities**—FSMC responsibility for any of the functions that must be retained by the SFA.
- ☐ 8. **Automatic Renewal**—provisions which automatically renew the contract.
- ☐ 9. **Processing Contracts**—contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

For the item(s) above not checked, indicate item number(s) with corresponding page number(s) and section of document(s) where provision(s) appears.

Item Number(s)

Page Number(s)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## Section K - Advisable Inclusions

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the SFA in developing contractual language that will ensure that the best interest of the SFA is served by the contract.

- \_\_\_\_\_ 1. **Compliance with Program Regulations**—requirement that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 245 and 250, and FNS instructions and policy.
- \_\_\_\_\_ 2. **USDA Donated Foods** - Specific statement that USDA donated foods are not to be used for special functions conducted outside the nonprofit school food service (e.g., catered meals).
- \_\_\_\_\_ 3. **Special Functions**—method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.
- \_\_\_\_\_ 4. **Fee Structure** - Basis for fee adjustments.
- \_\_\_\_\_ 5. **Certification of Independent Price Determination**—certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form (Appendix D).
- \_\_\_\_\_ 6. **Civil Rights Compliance**—assurance that the FSMC will conform with all civil rights requirements applicable to the SFA.
- \_\_\_\_\_ 7. **Claim Liability**
  - \_\_\_\_\_ a. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the SFA's period of liability.
  - \_\_\_\_\_ b. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
- \_\_\_\_\_ 8. **Location of Records**—all FSMC records pertaining to the SFA should be maintained at the SFA while the contract is in effect, and preferably for the required retention period.
- \_\_\_\_\_ 9. **Nutrition Education**—FSMC responsibility for nutrition education activities, as applicable.